

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Institutional Leasing, Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Corporation Franchise Tax :
under Article 9-A of the Tax Law
for the Year 1975. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by certified mail upon Institutional Leasing, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Institutional Leasing, Inc.
One Rockefeller Plz.
New York, NY 10020

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
19th day of September, 1980.

Subscribed and sworn to before me this
19th day of September, 1980.
J. M. [Signature]

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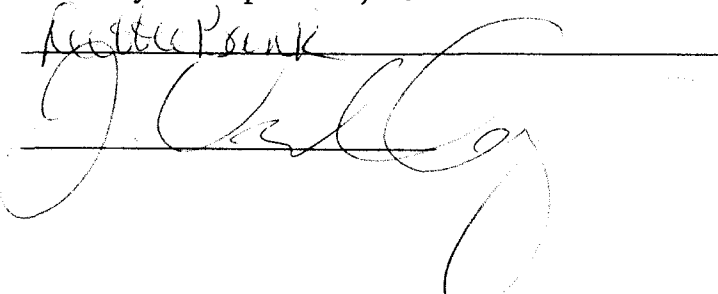
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by certified mail upon Richard E. Halperin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Richard E. Halperin
Shea, Gould, Glimenko & Casey
330 Madison Ave.
New York, NY 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
19th day of September, 1980.



STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

September 19, 1980

Institutional Leasing, Inc.
One Rockefeller Plz.
New York, NY 10020

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Richard E. Halperin
Shea, Gould, Glimenko & Casey
330 Madison Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
INSTITUTIONAL LEASING, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Franchise Tax on a Business :	:	
Corporation under Article 9-A of the Tax	:	
Law for the Year 1975.	:	

Petitioner, Institutional Leasing, Inc., One Rockefeller Plaza, New York, New York 10020, filed a petition for redetermination of a deficiency or for refund of franchise tax on a business corporation under Article 9-A of the Tax Law for the year 1975 (File No. 20794).

A formal hearing was held before Herbert Carr, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 15, 1979 at 9:20 A.M. Petitioner appeared by Shea, Gould, Climenko & Casey, Esqs. (Richard E. Halperin, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Bruce M. Zalaman, Esq., of counsel).

ISSUE

Whether petitioner, Institutional Leasing, Inc., may file a combined return with its wholly-owned subsidiary, 1973 Barge Leasing Corp.

FINDINGS OF FACT

1. Petitioner, Institutional Leasing, Inc. ("ILI"), filed a combined franchise tax return for the tax year 1975 as well as separate tax returns for itself and 1973 Barge Leasing Corp. ("BLC"), petitioner's wholly-owned subsidiary.
2. Petitioner timely filed a request for permission to file a combined return.
3. By letter dated January 15, 1976, the Audit Division denied petitioner's request to file a combined return.

4. On September 1, 1977, the Audit Division issued a Statement of Audit Adjustment against petitioner showing a deficiency in tax of \$2,142.77, less a credit of \$134.68, plus interest of \$266.00, for a total deficiency of \$2,274.09. The adjustment was based upon the disallowance of the combined return for 1975. On October 13, 1977, the Audit Division issued a Notice of Deficiency against petitioner in the amount of \$2,298.41 based on the adjustment.

5. ILI and BLC are foreign corporations doing business in the State of New York.

6. In 1975, ILI received \$1,123,307.00 in net income from its activities as a broker/consultant in relation to the leasing and sale of equipment.

7. In 1975, ILI received (a) \$49,000.00 from three computer leases in which ILI acted as lessor, and (b) \$107,440.00 from a computer lease in which ILI had a 90 percent interest, as lessor, along with ILI's management, which had a 10 percent interest.

8. In 1975, BLC received \$361,948.00 from two barge leases in which BLC was the lessor, and General Intermodal Logistics Corporation ("GILCO") was the lessee.

9. In connection with the direct leasing operations of ILI or BLC, the corporations act as passive investors.

10. In 1973, ILI organized BLC for the purpose of financing the two aforementioned barge leases. These leases were guaranteed by the U.S. government under the "Title XI, 'MARAD'" program. As a condition of such guarantee, the Maritime Administration instructed ILI to provide a corporate obligor instead of a trust or partnership which ILI had intended to utilize. ILI thereupon organized BLC.

11. BLC has no office space or employees of its own. ILI provides all of BLC's management functions.

12. The masters of the leased vessels were employees of ILI.

13. In 1977 and 1978, GILCO defaulted in paying rent under the BLC leases. ILI made up these defaults and sought reimbursement from GILCO. ILI also assisted GILCO in disposing of a portion of the leases to facilitate GILCO's meeting its financial obligations to BLC.

14. None of BLC's income or expenses are derived from transactions with ILI.

15. None of ILI's income or expenses are derived from transactions with BLC except insofar as ILI is an investor in BLC.

CONCLUSIONS OF LAW

A. That section 211.4 of the Tax Law authorizes the Tax Commission, in its discretion, to require or permit a taxpayer and its wholly-owned taxpayer subsidiary to make a report on a combined basis.

B. That as both petitioner, Institutional Leasing, Inc. and its subsidiary, 1973 Barge Leasing Corp., are subject to tax under Article 9-A of the Tax Law, both are "taxpayers" within the meaning of section 211.4 of the Tax Law (section 208.2 of the Tax Law).

C. During the periods at issue, the State Tax Commission provided, by regulation, that in determining whether the tax would be computed on a combined basis, it would consider various factors, including the following:

(1) Whether the corporations were engaged in the same or related lines of business; (i)

(2) Whether any of the corporations were in substance merely departments of a unitary business conducted by the entire group;

(i) Although both corporations were engaged in equipment leasing, most of petitioner's income was generated by lease brokerage and lease consulting work. BLC was not engaged in brokerage or consulting work.

- (3) Whether the products of any of the corporations were sold to or used by any of the other corporations; (ii)
- (4) Whether any of the corporations performed services for, or loaned money to or otherwise financed or assisted in the operations of, any of the corporations; (iii)
- (5) Whether there were other substantial intercompany transactions among the constituent corporations.

(former 20 NYCRR 5.28(b))

The essential elements of these factors have been carried over into the current regulations which were effective for taxable years beginning on or after January 1, 1976 and which provide, in pertinent part:

"In deciding whether to permit or require combined reports the following two (2) broad factors must be met:

(1) the corporations are in substance parts of a unitary business conducted by the entire group of corporations, and

(2) there are substantial intercorporate transactions among the corporations."

(20 NYCRR 6-2.3(a) (Emphasis supplied))

The mandatory language of the current regulations takes cognizance of those elements which the Tax Commission has consistently deemed to be the key factors in determining whether combination should be permitted or required, i.e., the unitary nature of the business conducted by the corporations and whether there were substantial intercorporate transactions among the corporations. (See: Petition of Annel Holding Corp., et al. State Tax Commission, August 2, 1973, Determination confirmed, Annel Holding Corp. v. Procaccino, 77 Misc. 2d

(ii) They were not so sold or used.

(iii) It is noted that petitioner paid the lender monies owing under the financing agreement when the lessee of the barges defaulted and later helped the lessee dispose of a portion of the lease and also that petitioner provided all of BLC's management functions.

886 (Sup. Ct. Albany County, 1974); Petition of N. K. Winston Corporation, et al.
State Tax Commission, August 21, 1974. Petition of Montauk Improvement, Inc.
et al., State Tax Commission, September 28, 1979.)

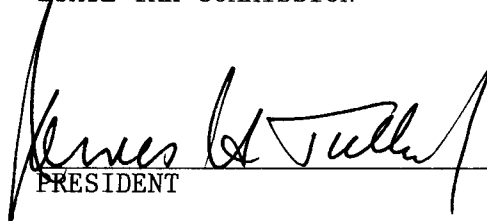
The petitioner herein has not only failed to show that it and its subsidiary were each, in substance, part of a unitary business, but has also failed to show that there were substantial intercorporate transactions between them. Accordingly, permission to file on a combined basis is denied.

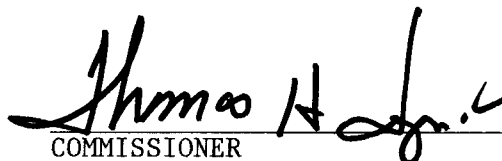
D. That the petition of Institutional Leasing, Inc. is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York

SEP 19 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER